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INTEROFFICE MEMORANDUM

DATE: February 24, 1997

TO: Russ Cirillo

FROM: John P. Schmuck

SUBJECT: B891 OU1 ARARs Governing Tank Inspection - JPS-001-97

Summary
For removal actions, the National Contingency Plan (NCP) requires that ARARs be attained to the extent practicable. The 881 Hillside IM/IRA is based upon removal action authority. Further, the NCP allows the regulator to identify discrete portions of regulations as relevant and appropriate. In this circumstance, discrete portions of the tank inspection and tank response requirements were identified and discussed in the IM/IRA. The requirements identified did not include daily inspection and did not specify removal of all liquids within 24 hours.

In this circumstance it is clear that removal of all liquids (consisting of non-contact stormwater) on a daily basis from the outside sumps is not practicable. Further, because the tanks can be fully inspected when stormwater is present in the containment, and because the containment has sufficient capacity to contain the contents of the largest tank even when stormwater is present in the containment, removal of all stormwater on a daily basis from the containment and sumps will not provide added protectiveness. The IM/IRA does require inspection and repair of the containment on an as-needed basis. Because only non-contact, non-corrosive stormwater is being held in the containment, complete inspections (ie. dry sump) are only required on a periodic basis.

ARARs Attainment for Removal Actions
The *Interim Measure/Interim Remedial Action Plan and Decision Document, 881 Hillside Area, Operable Unit No. 1*, January, 1990 was "prepared to conform with the requirements for an Engineering Evaluation/Cost Analysis (EE/CA) as defined in the proposed National Contingency Plan [40 CFR 300.415(b)(4)]." (See page 1-1 of the IM/IRA). The proposed National Contingency Plan at 40 CFR 300.415(j) provided that:

> "removal actions... shall, to the extent practicable attain or exceed applicable or relevant and appropriate Federal and State requirements". (See 53 FR 51501).

This language was ultimately adopted in the final National Contingency Plan. (See 40 CFR 300.415(i)). As a result, at B891 we are required to attain the ARARs identified in the IM/IRA to the "extent practicable".

ARARs Identified in the IM/IRA
The ARARs governing the use of the B891 tanks are presented in Table 3-3 of the IM/IRA at page 3-25. The IM/IRA identifies 40 CFR §264.195 as the ARAR for tank inspections and states:

> "(i)nspect the following: overfilling control, control equipment, monitoring data, waste level (for uncovered tanks), tank condition, above-ground portions of tanks, (to assess their structural integrity) and the area surrounding the tank (to identify signs of leakage)".

Similarly, the IM/IRA identifies 40 CFR §264.196 as ARAR and states:

> "(r)epair any corrosion, crack or leak".

Interpretation of Relevant and Appropriate Requirements

The IM/IRA identifies these two ARARs are relevant and appropriate requirements. This is a significant determination within the CERCLA framework. When evaluating relevance and appropriateness, the descisionmaker has the discretion to divide the rules into discrete requirements and determine which of the requirements are both relevant and appropriate. On that topic EPA stated:

> (s)tatutes and regulations are sometimes made up of discrete requirements, each requirement having its own jurisdictional prerequisites. EPA has found that within these authorities often only some requirements within a regulation are relevant and appropriate. In contrast with an applicable requirement, flexibility exists to identify discrete "appropriate" portions of a regulation which may be mixed with "appropriate" portions of other regulations in a manner that makes good environmental sense for the site". (See 53 FR 51437).

In the IM/IRA, the decisionmakers have examined the regulations and have taken discrete potions of the tank inspection (§264.195) and tank response (§264.196) requirements and identified them for the B891 operations. As indicated in the Federal Register language cited immediately above, this is a legitimate exercise of discretion.

Factual Circumstances

The tanks in question are located are relatively new, are outside and are within secondary containment. The secondary containment sloped in such a way that stormwater accumulation is carried away from the tank, so that the entire above ground portion of the tank is visible for inspection even when stormwater remains in the containment and sumps. In addition, when stormwater is present in the secondary containment, the containment has more capacity than the largest tank.

The secondary containment was not originally designed to easily remove water to a dry state. The steps necessary to attain a completely dry sump to inspect for corrosion or cracks present significant safety issues. For that reason, from a safety perspective the frequency of sump inspection should be minimized.